

Introduced by Senator Speier

June 5, 2003

Senate Concurrent Resolution No. 34—Relative to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

SCR 34, as introduced, Speier. Attorneys: alternative dispute resolution.

This measure would urge the State Bar of California to adopt requirements for the admission to the State Bar to include testing of applicants' understanding of skills relative to resolution of disputes without litigation and would also request the State Bar to adopt associated law school curriculum and continuing education requirements in that regard.

Fiscal committee: no.

- 1 WHEREAS, In the interest of promoting justice, securing the
- 2 civil liberties, and ensuring the equal protection of the laws for the
- 3 people of California, it is the goal of the Legislature to promote
- 4 fair, efficient, swift, and economical means by which California
- 5 residents may resolve claims, conflicts, and disputes, and
- 6 effectively assert defenses, in matters actually or potentially under
- 7 the jurisdiction of the civil courts; and
- 8 WHEREAS, While litigation may be the most appropriate
- 9 means for resolution of certain of those claims, conflicts, and
- 10 disputes, or assertion of defenses, in many cases litigation is not
- 11 the most cost-effective or efficient means to those ends; and
- 12 WHEREAS, The costs of litigation may, in many cases, limit
- 13 the public's access to the means of just resolution of claims,
- 14 conflicts and disputes, or effective assertion of defenses, and may

1 impose avoidable economic burdens upon individuals and
2 businesses both large and small, to the detriment of the economic
3 and social well-being of the people of California; and

4 WHEREAS, Even where parties to a conflict or dispute can
5 afford the costs of litigation, in many cases litigation is a less
6 efficient means of resolution of conflicts and disputes, and its use
7 may, by taxing the resources of the judicial system, operate to
8 impede unnecessarily the progress of other matters that necessarily
9 require adjudication and the skilled advocacy of trial attorneys;
10 and

11 WHEREAS, Use of alternative methods of dispute resolution,
12 particularly voluntary third party mediation, is often a more
13 efficient and cost-effective means of conflict and dispute
14 resolution and contributes to more efficient administration of civil
15 justice; and

16 WHEREAS, Third party mediation has been increasingly
17 encouraged by the rules and procedures of the state and federal
18 judiciaries; and

19 WHEREAS, Every California attorney, upon admission to the
20 State Bar of California, is required to swear or affirm an oath to
21 “support the Constitution of the United States and the Constitution
22 of the State of California, and faithfully discharge the duties of an
23 attorney and counselor at law to the best of my knowledge and
24 ability,” pursuant to Section 6067 of the Business and Professions
25 Code; and

26 WHEREAS, An attorney’s duty as a counselor to clients has
27 been recognized to include consideration of the most judicious and
28 economical means by which a client’s interests may be served in
29 the resolution of disputes to which the client is a party, including
30 not only considerations of the law, but of other considerations such
31 as moral, economic, social, and political factors that may be
32 relevant to a client’s situation, pursuant to Rule 2.1 of the
33 American Bar Association’s Model Rules of Professional
34 Conduct; and

35 WHEREAS, The majority of litigated cases are in fact settled
36 or resolved without trial, so that negotiation of conflicting claims
37 in fact commonly engages more of the professional time attorneys
38 (including trial attorneys) spend than use of skills for actual trial
39 or appeal of cases; and



1 WHEREAS, Law school courses in California should provide
2 students with actual case studies of successful dispute resolution
3 without litigation, and, in fact, successful negotiation,
4 conciliation, and mediation experiences of practicing attorneys
5 (including trial attorneys), counselors, and mediators, provide
6 abundant material for those case studies; now therefore be it

7 *Resolved by the Senate of the State of California, the Assembly*
8 *thereof concurring*, That is the policy of the Legislature to foster
9 in California law students, and expand in legal practitioners, skills
10 in negotiation, conciliation, problem-solving, and peacemaking
11 through the character and content of primary and continuing legal
12 education, no less than the skills of litigation and appellate
13 advocacy; and to this end, to promote required training, as part of
14 all core courses offered in California public law schools and law
15 schools receiving public funds, and in continuing legal education
16 of admitted attorneys, in mediation analysis and practice,
17 including the skills of negotiation, conciliation, problem-solving
18 and peacemaking in the resolution of civil disputes and conflicts,
19 until their use is reasonably determined to be ineffective, and
20 litigation becomes reasonably necessary to ascertain the relevant
21 law of the case, protect a client's rights or interests against injustice
22 or oppression, or for other just, appropriate, and reasonably
23 necessary causes; and be it further.

24 *Resolved*, That the State Bar of California, under the
25 supervision of the Supreme Court of the State of California, is
26 urged to adopt, within a reasonable period of no more than three
27 years, requirements for the admission to the State Bar of California
28 to include testing of applicants' understanding and acquisition,
29 through their legal education and training, of skills required to
30 assess factors in a client's situation (other than and in addition to
31 relevant rules of law) that may facilitate resolution of disputes
32 without litigation, including specifically skills promoting
33 harmonization of conflicting claims through conciliation,
34 negotiation, and voluntary third party mediation; and be it further

35 *Resolved*, That the State Bar of California, under the
36 supervision of the Supreme Court of the State of California, is
37 urged to adopt, within a reasonable period of no more than three
38 years, continuing education requirements for attorneys admitted to
39 the State Bar of California, expanding the skills of California
40 attorneys to assess factors in a client's situation (other than and in



1 addition to relevant rules of law), that may facilitate resolution of
2 disputes without litigation, including specifically skills promoting
3 harmonization of conflicting claims through conciliation,
4 negotiation, and voluntary third party mediation; and be it further
5 *Resolved*, That the Secretary of the Senate transmit copies of
6 this resolution to the author for appropriate distribution.

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